

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

IN THE FEDERAL TERRITORY, MALAYSIA

ORIGINATING SUMMONS NO: WA-24NCvC-4216-09/2023

BETWEEN

TAMALARSI A/P ARUMUGAM

[NRIC No: 601027-10-6600]

...

APPLICANT

AND

READY CASH SDN BHD

[COMPANY No:202001036805]

...

RESPONDENT

GROUND OF JUDGMENTThe relief sought

- [1] The Applicant filed this originating summons (OS) which was his second time to remove the caveat lodged by the Respondent on the property Geran Mukim 1353/M3/2/214 No Lot 27921 Mukim Setapak, Daerah Kuala Lumpur in the Federal Territory of Kuala Lumpur with an address of C-2-2 Jalan Pelangi 9, Taman Pelangi Sentul, 51000 Kuala



Lumpur (the property). The Applicant additionally prayed for an order that prohibited the Respondent or any of its representatives/agents from further lodging caveats or mortgage/sell the property. The Applicant had also prayed for damages pursuant to the alleged wrongful lodging of caveat by the Respondent. An order that the Land Office cancel and remove all caveats on the property and prohibit it from accepting any further lodgements was also prayed for by the Applicant.

[2] On 18.1.2024 upon the consideration of the submissions and all the facts and circumstances of this OS as evident by the cause papers, this Court dismissed the OS. It was found that the resolution sought for by the Applicant was with the vendor of the property not the Respondent. The OS was dismissed with costs of RM8,000 subject to allocator fee. The Applicant filed an appeal dated 13.4.2024.

The basis for the Plaintiff's application

[3] The background of the ownership of the property which is a flat of 114 square meters was developed by Inner Glamour Sdn Bhd. Vide a sale and purchase agreement dated 4.4.2001 to one Ramu a/l Raman and one Vimala Devi Nadesan. They in turn sold the property to one Chithrangy a/p Nadesan as can be seen by the sale and purchase agreement dated 7.10.2002. The drama then started here. The Applicant purchased the property from Chithrangy a/p Nadesan (now use the name Nuraisha Chithrangy binti Abdullah (the vendor)) for RM230,000. The sale and purchase agreement was dated 6.4.2022. Form 14A the transfer form by way of escrow was completed and kept by the Applicant's solicitors. At the same time, the Applicant had paid RM23,000 and RM107,000 towards



the purchase price. A caveat was lodged by the Applicant on the property on 26.5.2022 vide PTB 1387/2022.

[4] Pursuant to the receipt of the redemption statement from the vendor's bank, the Applicant on 12.9.2022 forwarded the redemption payment of RM108,250 together with Forms 16N to discharge the charge. The original grant and all forms were then given to the Applicant. In the process of completing the transfer of the ownership of the property to the Applicant, it was discovered that there was a caveat lodged on the property by a third party under the name of AMLI Mountain Sdn Bhd (AMSB) vide PTB 1760/2022. The Plaintiff then referred to an originating suit WA-24NCvC-797-2023 dated 7.3.2023 (Suit 797) that it took out against AMSB for the removal of the said caveat. The matter was settled between the parties as agreed, with the removal of AMSB's caveat on 2.5.2023 and the withdrawal of Suit 797.

[5] Nonetheless, there was another caveat lodged on 6.4.2023 which was by the Respondent. The Applicant claimed it was done in bad faith. The Applicant submitted that the lawyers were common to the Applicant and AMSB, and that both entities were helmed by a common director, with a common company secretary. Moreover, the Applicant emphasized that AMSB was the sole shareholder of the Respondent.

The historical facts to the case

[6] A careful appreciation of the factual background was required. The documents exhibited in the affidavits in this OS were examined. This Court found that the Respondent had indeed lodged a caveat on the property on 5.4.2023. This was pursuant to a Money Lending agreement with the



vendor on 16.12.2022 for the sum of RM117,370 of which the property was collateralized. It was agreed that the Respondent was to pay RM93,000 to HSBC Bank Berhad to redeem the facility of the vendor for the property. The vendor had agreed that a charge to be created in favour of the Respondent. The Respondent's caveat vide PTB 1152/2023 on 6.4.2023 was to protect its interest for repayment from the vendor of the amount loaned. The vendor had failed to honour her obligations to re-pay what was borrowed from the Respondent that resulted in the filing of a civil action WA-A52NCC-4116-0/2023 (Case 4116) for the recovery of the amount the vendor owed. On 3.11.2023 the Respondent obtained a judgment in default against the vendor for the sum of RM132,054.39 together with interest thereon and a cost of RM1,311.

This Court's assessment

[7] On that premise, this Court found that the Respondent had not lodged its caveat on the property in bad faith. The Applicant's contention was not accepted compounded by the fact that Suit 797 was against a separate entity to the Respondent. Aside from bare averments, there was nothing to show this Court that the lawyers whom the Applicant contended were the same had ulterior motives to harm the Applicant by any lodgement of caveats of any other action. The Court had regarded the legal principles enunciated in ***Upmarket Development Sdn Bhd v Sriera Developmet Sdn Bhd*** [2011] 4 MLJ 681 and opined that it was not a fit and proper instance to order the removal of the Respondent's caveat as:

- (1)The Respondent had a caveatable interest in the property when it was registered;



(2)There were serious issues to be tried related to the parties respective interests in the property;

(3)The harm should the caveat be removed outweighed the preservation of status quo.

[8] This Court had considered the arguments of the Applicant, namely that her interests existed on 26.5.2022 long before the Respondent's. The Appellant argued that any agreements after she had bought the property from the vendor where the purchase price had been paid in full, were null and void as the vendor had no locus to enter into any further agreements. Though the Applicant may be right, the fact that the secured loan agreement between the vendor and the Respondent was affected – the moneys were paid and utilised by the vendor and the Respondent had performed its contractual obligations – did not justify the removal of the Respondent's caveat (see ***Devi Meyyammai a/p M Ramanathan & Anor v Hartini Bt Mohamad & Anor*** [2013] 3 MLJ 813).

[9] As to the Applicant's contention that there was a delay by the Respondent in registering its interest – the caveat was lodged on 6.4.2023 when the loan agreement was dated 16.12.2022, this Court did not find that fact to be a basis to corroborate the Applicant's allegation of bad faith on the part of the Respondent. After all, the Respondent had obtained a judgment in default against the vendor on 3.11.2023 that showed it had not reneged its efforts at any time in trying to procure repayments from the vendor.

[10] There were definitely serious issues to be tried here – but it rested on resolutions with the vendor. Affidavit evidence between the Applicant



and the Respondent was insufficient as the position of the vendor was required to determine the reasons for her execution of the agreement with the Respondent and its validity. The reliefs and remedy may very well rest on her and not the Respondent. In fact, the Applicant submitted that the vendor as bare trustee could not have used the property as security for the Respondent. Refer to ***Rap Nathan v Haji Abdul Rahman bin Haji Yusoff & Ors*** [1980] 1 MLJ 248, ***Maria Yusof v Abdullah Gendak*** [2015] MLRHU 575.

[11] As at the material time of this OS, the loan agreement between the Respondent and the vendor remained valid and binding until it was declared otherwise by the court upon a determination of facts (see ***Million Westlink Sdn Bhd & Anor v Maybank Investment Bank Bhd & Ors and Other Appeals*** [2018] 4 MLJ 392). This Court noted that the issue of this OS was not to determine the validity of the said contract but on the removal of the Respondent's caveat.

[12] This Court was satisfied that the Respondent who had the onus, had shown that its caveat ought to be maintained (see ***Eng Mee Yong v Letchumanan*** [1979] 1 MLRA 143). It had established a caveatable interest and shown that the vendor had agreed to use the property as security for the duration of the repayment of the loan facility (see ***Hew Sook Ying v Hiw Tin Hee*** [1992] 1 MLRA 169 and ***Mosbert Berhad (In Liquidation) v Stella D'Cruz*** [1985] 1 MLRA 558).

[13] This OS did not comprise of straightforward facts – there were serious factual issues in dispute of which concerned another party, namely the vendor. A removal of the Respondent's caveat would have been unjustified (refer to ***Seneba Crystar Sdn Bhd v DCS Trading Sdn***



Bhd [2023] MLRHU 629). The principles formulated in **Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor** Civil Appeal No W-02-38-94 were fulfilled by the Respondent for his caveat to remain for now. The question was not whether the Applicant was the beneficial owner of the property, the question for the removal of the caveat lodged by the Respondent was whether he had such caveatable interest, had shown it and that on a balance of convenience, it lay in favour of the Respondent's caveat remaining there pending the resolution of the issues that required the involvement of the vendor.

DATED 15 FEBRUARY 2024



ROZ MAWAR ROZAIN
JUDICIAL COMMISSIONER
HIGH COURT IN MALAYA
KUALA LUMPUR

For the Applicant: R. Maran a/l K. Ramiah

T/h The Law Office Of Maran Ram

For the Respondent: Ramesh Lachman together with Mohd Fairus Ismail and Fitrah Ain Idris
T/n Palany, Fairus & Adib Chambers

